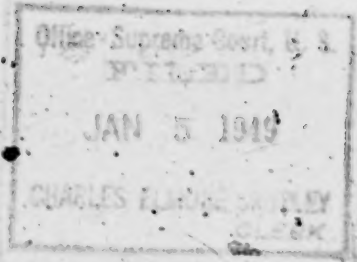


LIBRARY  
SUPREME COURT, U.S.



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1948**

---

**No. 500**

---

**THE UNION NATIONAL BANK OF WICHITA,  
KANSAS,**

*Appellant,*

*vs.*

**CARL C. LAMB.**

---

**APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.**

---

**STATEMENT AS TO JURISDICTION**

---

**MAURICE J. O'SULLIVAN,  
JOHN G. KILLIGER, JR.,**  
*Counsel for Appellant.*

7

# INDEX

## SUBJECT INDEX

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	2
Date of judgment and date of application for appeal	3
Nature of the case and rulings below	4
Cases believed to sustain jurisdiction	5
Assignment of errors	6
Appendix "A"—Opinion of the Supreme Court of Missouri	8

## TABLE OF CASES CITED

<i>Adam v. Saenger</i> , 303 U. S. 59, 82 L. Ed. 649	5
<i>Barber v. Barber</i> , 323 U. S. 77, 89 L. Ed. 82	5
<i>Braderick v. Rosner</i> , 294 U. S. 269, 79 L. Ed. 1100	5
<i>Converse v. Hamilton</i> , 224 U. S. 243, 56 L. Ed. 749	5
<i>Jacobs v. Marks</i> , 182 U. S. 583, 45 L. Ed. 1241	5
<i>Kenny v. Supreme Lodge of the World, Loyal Order of Moose</i> , 252 U. S. 411, 64 L. Ed. 638	5
<i>Morris v. Jones</i> , 329 U. S. 545, 91 L. Ed. 488	5
<i>Roche v. McDonald</i> , 275 U. S. 449, 72 L. Ed. 365	5
<i>Titus v. Wallick</i> , 306 U. S. 282, 83 L. Ed. 653	5
<i>Union National Bank of Wichita, Kansas v. Lamb</i> , 213 S. W. (2d) 416	2

## STATUTES CITED

Colorado Ann. Stat. 1935, Volume 3:	
Ch. 93	4
Ch. 88, Section 2	4
Constitution of the United States:	
Article IV, Section 1	2, 5, 6, 7
Fourteenth Amendment	4

	Page
Corpus Juris Secundum; Volume 49, sec. 549	4
Revised Statutes of Missouri, 1939, Section 1038, Vol.	
• 1, page 284	1, 2, 6
United States Code, Title 28:	
Section 1257	1
Section 1738	1, 2, 3, 4, 6
Section 1739	1, 2, 3, 4, 6
Section 2106	1

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 500

THE UNION NATIONAL BANK OF WICHITA,  
KANSAS, A CORPORATION,

*Appellant,*

*vs.*

CARL C. LAMB,

*Respondent.*

**JURISDICTIONAL STATEMENT**

For its jurisdictional statement, appellant states

(a) This court is invested with jurisdiction under Public Law 773, approved June 25, 1948, effective September 1, 1948, U.S.C.A., Title 28, Sections 1257 and 2106. Jurisdiction is specifically based upon subdivision 2 of Section 1257, because the final decision of the Supreme Court of Missouri was in favor of the validity of Section 1038, R.S. Mo. 1939, Vol. 1, page 284, as construed by said court, the validity of which was drawn in question as repugnant to U. S. Const. Art. IV, Section 1 and U.S.C.A., Title 28, Section 687, new sections 1738 and 1739, as revised and effective September 1, 1948.

(b) 1. The validity of section 1038 Rev. Stat. Mo. 1939 found at Vol. I, page 284, Rev. Statutes Mo. 1939, as construed by the opinion of Division One of the Supreme Court of Missouri, reported 213 S. W. 2d, 416, contravenes and is repugnant to Article IV, Section 1, of the Constitution of the United States and to U.S.C.A., Title 28, Section 687, new sections 1738 and 1739 as revised and effective September 1, 1948.

2. Section 1038, R.S. Mo. 1939, reads:

"Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, shall be presumed to be paid and satisfied after the expiration of ten years from the date of the original rendition thereof, or if the same has been revived upon personal service duly had upon the defendant or defendants therein, then after ten years from and after such revival, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever."

3. 3 Colo. Ann. St. 1935, Ch. 93, Sections 2, page 1036, and Chapter 6, Section 54(H), page 210, read:

"Sec. 2: All and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment shall be obtained in any court of record, either at law or in equity for any debt, damages, costs or any other sum of money, shall be liable to be sold on execution to be issued upon such judgment; . . . and, provided, further, that execution may issue on such judgment, to enforce the

same, at any time within twenty years from the entry thereof, but not afterwards, unless revived as provided by law.

"A judgment may be revived against any one or more judgment debtors whether they are jointly or severally liable under the judgment. \* \* \* A revived judgment must be entered within twenty years after the entry of the judgment which it revives, and may be enforced and made a lien in the same manner and for a like period as an original judgment."

4. Petitioner by reference adopts Paragraphs numbered 2 to 9 both inclusive of its Petition for Allowance of Appeal to the Supreme Court of the United States, as fully as if here set forth at length.

(c) Final judgment of the Missouri Supreme Court in the above entitled cause was rendered by its action in overruling motion for rehearing and motion to transfer to the court In Banc on September 13, 1948. Petition for appeal to this court was presented December 13, 1948.

(d) 1. Appellant filed its petition in the Circuit Court of Jackson County, Missouri, to recover on a judgment of revivor entered forty-seven days before, or on October 27, 1945, by the District Court of Colorado, at Denver. The judgment revived on October 27, 1945, was rendered December 8, 1927, on personal service, for \$3493.01 and costs. Respondent's plea of section 1038, R.S. Mo. 1939, in bar, was sustained and judgment was entered for defendant. It was affirmed on appeal by the opinion of Division One of the Supreme Court of Missouri, which denied motion for rehearing and to transfer to the court In Banc on September 13, 1948. No further proceedings were open in the Missouri courts.

2. The final opinion of Division One of the Supreme Court of Missouri erred in substantive questions of federal



law in material matters of general application and of public importance in that the Colorado District Court was vested with and duly exercised lawful jurisdiction under the laws of Colorado in rendering its judgment of revivor and for recovery thereon, with right of execution under the laws of that state. Such judgment was final when suit was filed in Missouri. It was not open to collateral attack. The Missouri courts were precluded from a redetermination of the issues duly adjudicated in Colorado. Missouri courts were bound by the face of the Colorado judgment of revivor as rendered.

3. Section 1038, R.S. Mo., 1939, had no application as a statute of limitations. The Missouri action was filed forty-seven days after the entry of the judgment of revivor. Missouri courts were without constitutional power to project its statute as a statute creating a presumption of payment to nullify or to refuse full faith to the Colorado adjudication which revived the original judgment as if it had originally been rendered on October 27, 1945. The general law is correctly stated in 49 C.J.S. 1020, sec. 549, to be:—

“The revival of a judgment by regular proceedings reinvests it with all the effect and conditions which originally belonged to it and which have been wholly or partly suspended by lapse of time.”

3 *Colo. Ann. Stat. 1935, Ch. 93*, which the opinion cites, so provides.

4. Respondent, by his residence therein prior to the original judgment in 1927 and appellant, by suit, both elected to accept Colorado laws to govern their rights and liabilities. Respondent benefitted while appellant was adversely affected by the amendment effective March 7, 1935, of Section 2, Ch. 88, 1935 Ann. Colo. St., which was duly pleaded in the petition, (Tr. 4), whereby interest on judgments

was reduced from 8% to 6%. One of the primary purposes of U. S. Const. Art. IV, Section 1, and of its counterpart in the Articles of Confederation, was to prevent a renunciation and escape from existing liabilities by removals to another state. Respondent accepted Colorado law which provided for revival of judgments within twenty years, by residing in that state. His removal to Missouri did not substitute its laws for obligations theretofore adjudicated under the laws of Colorado. The contrary construction of the Missouri statute contravenes the constitutional mandate of full faith and credit.

(e) Cases which are believed to sustain the jurisdiction of this court are:

*Jacobs v. Marks*, 182 U. S. 583, 45 L. Ed. 1241;

*Kenny v. Supreme Lodge of the World, Loyal Order of Moose*, 252 U. S. 411, 64 L. Ed. 638;

*Broderick v. Rosner*, 294 U. S. 629, 79 L. Ed. 1100;

*Titus v. Wallick*, 306 U. S. 282, 83 L. Ed. 653;

*Roche v. McDonald*, 275 U. S. 449, 72 L. Ed. 365;

*Adam v. Saenger*, 303 U. S. 59, 64, 82 L. Ed. 649;

*Morris v. Jones*, 329 U. S. 545, 91 L. Ed. 488;

*Cowse v. Hamilton*, 224 U. S. 243, 56 L. Ed. 749;

*Barber v. Barber*, 323 U. S. 77, 89 L. Ed. 82.

(f) The petition filed in the Circuit Court of Jackson County included an authenticated copy of the judgment of revivor and proceedings thereon and of the original judgment of December 8, 1927, certified in accordance with U. S. C. A., Title 28, Section 687 (Tr. 6-13). The petition pleaded that the judgment of revivor was entitled to full faith and credit under the above statute and under U. S. Const. Art. IV, Sec. 1.

Judgment was rendered for defendant (Tr. 29). Motion for new trial filed in due time was overruled and an appeal



was perfected to the Supreme Court of Missouri (Tr. 30-37). The motion for new trial specifically complained of the denial of full faith and credit, contrary to U. S. C. A., Title 28, Section 687 and to U. S. Const. Art. IV, Section 1.

The opinion of Division One of the Supreme Court of Missouri sustained the validity of Section 1038, R. S. Mo. 1939, as therein construed. Appellant's motion for rehearing and to transfer to the court In Banc, specifically raised the denial of full faith and credit and that the construction of Section 1038 R. S. Mo. 1939, contravened and was repugnant to the Federal Statute and to the U. S. Const. Art. IV, Section 1. Motion for rehearing and to transfer to the court In Banc was overruled September 13, 1948. No further procedure was provided by Missouri law.

*(g) Assignments of Error upon which Appellant expects to rely.*

1. The judgment of the trial court and of the Supreme Court of Missouri on appeal erred in denying full faith and credit to the valid, authenticated judgment of revival of the Colorado District Court and the Colorado statutes which were duly pleaded and proved, in contravention to U. S. Const. Art. IV, Section 1 and to U.S.C.A., Title 28, Section 687, now Sections 1738, 1739, as revised and effective September 1, 1948.

2. Section 1038, R.S. Mo. 1939, (volume 1, page 284), as construed and applied by the opinion of the Supreme Court of Missouri operates extraterritorially contrary to U. S. Const. Amendment XIV, Section 1, and contravenes and is repugnant to U. S. Const. Art. IV, Section 1 and to U.S.C.A., Title 28, Section 687, (now sections 1738 and 1739 as revised).

3. The judgment for defendant was erroneous and the Supreme Court of Missouri erred in refusing to reverse

same and in failing to direct entry of judgment for appellant upon the uncontroverted pleadings and proof. It thereby denied the rights secured to appellant under U. S. Const. Art. IV, Section 1, to have full faith and credit accorded in the Missouri courts to the valid and duly authenticated and proved valid judgment of revivor rendered by the Colorado District Court at Denver.

For all of which errors petitioner prays that the judgment of the Supreme Court of Missouri in the above entitled cause be reviewed and reversed by the Supreme Court of the United States and that entry of judgment be directed in favor of petitioner and for its costs.

MAURICE J. O'SULLIVAN,

JOHN G. KILLIGER, JR.,

*Attorneys for Petitioner.*

*700 Columbia Bank Building,*

*Kansas City, Missouri.*

## APPENDIX "A"

IN THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE,  
APRIL SESSION, 1948

No. 40684 \*

THE UNION NATIONAL BANK OF WICHITA, KANSAS, a Cor-  
poration, *Appellant*,

*vs.*

CARL C. LAMB, *Respondent*

Action to recover on a Colorado revived judgment. A trial without a jury resulted in a finding and judgment for defendant and plaintiff appealed. The appeal lies to the supreme court because the amount in dispute exceeds the sum of \$7500. See Art V, Sec. 3, Constitution.

December 6, 1927, plaintiff obtained a judgment for \$3,493.01 against defendant in the district court of Denver, Colorado. No payment was made on this judgment. October 27, 1945, nearly 18 years after original rendition, the Colorado judgment was revived by getting extraterritorial personal service upon defendant in Jackson County, Missouri. December 13, 1945, plaintiff filed the present cause to recover on the revived judgment.

Defendant makes two defenses, first, that plaintiff's cause is barred by Sec. 1038 R.S. 1939; Mo. RSA, Sec. 1038, and second, that the judgment of revival in Colorado was not upon personal service as required by Sec. 1038. This section provides: "Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, shall be presumed to be paid and satisfied *after the expiration of ten years from the date of the original rendition thereof*, or if the same has been revived upon *personal service* duly had upon the defendant or defendants therein, then *after ten years from and after such revival*, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years

from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever" (italics ours).

The Colorado statute of limitation on a judgment is 20 years, and the lien expires in 6 years. 3 Colo. Ann. Stat. 1935, Ch. 93, Sec. 2. This section, among other things, provides that "from and after twenty years from the entry of final judgment in any court of this state, the same shall be considered as satisfied in full, *unless revived as provided by law.*" If the present judgment had not been revived it would have been barred in this state in 10 years from the date of its original rendition, notwithstanding the 20 years limitation of the Colorado statute. Sec. 1038, *supra*; Northwestern Brewers Supply Co. v. Vorhees (Mo. Sup.), 203 S. W. (2d.) 422, and cases therein cited; *The question is, Does Sec. 1038 bar the revived judgment because it was not revived within 10 years from the date of its original rendition the limitation fixed for revival by Sec. 1271 R. S. 1939, Mo. RSA Sec. 1271.* This section is as follows: "The plaintiff or his legal representative may, at any time within ten years, sue out a scire facias to revive a judgment and lien; but after the expiration of ten years from the rendition of the judgment, no scire facias shall issue."

Plaintiff contends that to bar the present revived judgment would be contrary to the full faith and credit provision of the federal Constitution, Art. IV, Sec. 1, which provides: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." But "it has uniformly been held that each of the states of the Union may pass a law limiting the time within which an action may be brought on a judgment rendered in another state without thereby depriving the judgment of the full faith and credit to which it is entitled under the Constitution of the United States." 11 Am. Jur. Sec. 192, p. 507; 34

C. J., Sec. 1578, p. 1110; *Northwestern Brewers Supply Co. v. Vorhees*, supra. It is the general rule that the *lex fori* governs the limitation of actions within its borders, and that the enforcement of a foreign judgment goes to the remedy and not to its merits or validity under the *lex loci*. "In short the *lex fori* determines the time within which a cause of action shall be enforced." 11 Am. Jur. Secs. 191, 192, pp. 505, 507; *Northwestern Brewers Supply Co. v. Vorhees*, supra.

*Now to the question, Does Sec. 1038 bar the revived judgment because it was not revived within 10 years from the date of rendition of the original judgment?* We assume, without deciding, for the purposes of this question, that the extraterritorial personal service was valid for revival under Sec. 1038.

Plaintiff cites many cases from this and other jurisdictions, both federal and state. Among these are *Crim. v. Crim*, 162 Mo. 544, 63 S. W. 489, 54 LRA 502; *Morris v. Jones*, 329 U. S. 545, 67 S. Ct. 451, 91 L. Ed. 488, 168 ALR 656; *Milwaukee County v. White Company*, 296 U. S. 268, 56 S. Ct. 229, 80 L. Ed. 220; *Adams v. Saenger et al.*, 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649. *It is not necessary to refer to all these cases; none is pertinent to the question of limitation in hand except Union Fire Ins. Co. v. Hansen*, 237 Mo. App. 1110, 180 S. W. (2d) 265, by the Springfield Court of Appeals, and *Kratz v. Preston*, 52 Mo. App. 251, by the Kansas City Court of Appeals. The Hansen case was on a Nebraska judgment rendered December 7, 1932, and revived March 9, 1943, more than 10 years after original rendition. The trial court found for the plaintiff and the defendant appealed; the judgment was affirmed. The court said: "Article IV, section 1, of the United States Constitution, provides that 'full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.' On March 9, 1943, the Nebraska judgment against defendant was duly revived in Nebraska under the laws of Nebraska, as thus certified. It was then a good judgment in Nebraska. Full faith and credit must be given to the action of the district court of Nebraska. The trial court, therefore, could do nothing else than enforce the said Nebraska judgment in Missouri."



No case was cited; limitation was not considered, and Sec. 1038 was not mentioned.

The Kratz case was an action on a Pennsylvania judgment rendered July 26, 1861, and revived February 11, 1891, nearly 30 years after original rendition. What is now Sec. 1038 was Sec. 6796 R. S. 1889, when the Kratz case was decided, and the limitation on a judgment was then 20 years. There was no revival provision in the section at that time. It was held in the Kratz case that limitation began to run from the date of revival and not from the date of the original judgment. What is now Sec. 1038 was amended in 1895, Laws 1895, p. 221, and in 1899, Laws 1899, p. 300. The section in the statute of 1889, as stated, fixed the limitation of a judgment at "twenty years from the date of rendition." Since 1899, the section has not been changed, and as appears in Sec. 1038, the limitation is fixed at "ten years from the date of the *original* rendition" (italics ours). It was in the Act of 1899 that the term *original* was first inserted. Also, it was in the Act of 1899 that the revival provision was first inserted. In view of the language in Sec. 6796 R. S. 1889, "twenty years from date of rendition"; and in view of the then absence of any provision as to limitation on a revived judgment, the Kratz case ruling can be understood because the suit on the revived judgment was filed shortly after its rendition. The date when filed does not appear, but the case was decided January 2, 1893, less than two years after the judgment was revived.

Under Sec. 1038 a domestic or foreign judgment is barred in 10 years from the date of its original rendition, unless it is revived or payment made, and under Sec. 1271, a domestic judgment, if revived at all, must be revived within "ten years from the rendition of the judgment." It will be noted that Sec. 1271, the revival section, *does not say "from the original rendition"*; hence a second, third, etc., revival may be had if within 10 years from the last one. *Definitely, it is the law of this state that a foreign judgment, absent revival, or a payment thereon as provided in Sec. 1038, is barred in 10 years from the date of its original rendition regardless of what the limitation period may be under the law of the state where the*



judgment was rendered. *Northwestern Brewers Supply Co. v. Vorhees, supra.* And the only reasonable conclusion to draw is that a revived judgment, domestic or foreign, absent a payment as provided in Sec. 1038, is barred under said section unless the revival was within 10 years from the date of original rendition or, if such is the case, within 10 years from the last revival. In other words, a foreign judgment, original or revived, has the same standing in Missouri, no better, no worse, than a domestic judgment. This does not run counter to the full faith and credit provision of the federal Constitution, because, as we have seen, the enforcement of a foreign judgment goes to the remedy only and that is a matter for the law of the forum.

Our ruling, *supra*, disposes of this appeal, hence it is not necessary to rule the second defense that the *service* upon defendant for revival of the Colorado judgment was not *personal service* within the meaning of that term in Sec. 1038.

The judgment should be affirmed and it is so ordered.

(Signed) John H. Bradley, Commissioner. Per Curiam: The foregoing opinion by Bradley, C., is adopted as the opinion of the Court. All the Judges concur.

Dalton, C. concurs.

Van Osdol, C. concurs.